

rulemaking involving all interested parties where a mutually-acceptable standardized method of identifying telecommunications and cable equipment could be developed through consensus. Parties should begin the process of identifying their facilities (both existing attachments and all future attachments) now so that all facilities will be in compliance upon the effectiveness of the FCC's rate regulations.

**C. The Overlashing of Cable (As an Alternative to Setting Taller Poles) Should Be Encouraged Under Certain Conditions**

In addressing the pole access and denial of access issues raised in the Interconnection Rulemaking, the Commission's Interconnection Order noted that one way of "maximizing useable capacity on a pole is to permit 'overlashing,' by which a new cable is wrapped around an existing wire, rather than being strung separately."<sup>50/</sup> The Infrastructure Owners concur that, under certain conditions, overlashing may be an acceptable solution to a lack of sufficient capacity to permit another attachment.

Overlashing is not appropriate in all circumstances, however. Moreover, it raises many questions involving safety and reliability issues. It also prompts numerous questions about the fairness -- from a cost perspective -- of the overlashing. For example, what pole attachment rate should be paid by the overlashing party? Should the full rate apply or some percentage of that rate? How does the overlashing affect the rates paid by other parties with pole attachments on that pole? Should the overlashing party share in the costs of the other than usable space? In the Infrastructure Owners' view, many of these issues must be addressed by the Commission in its upcoming pole attachment rate rulemaking.

In the interim, the Infrastructure Owners suggest, at a minimum, that the following rules be established as a condition of overlashing:

- Parties seeking to overlash must obtain the pole owner's approval before any overlashing is performed.
- Parties seeking to overlash must have a pole attachment agreement with the utility pole owner before overlashing occurs.
- Like all other attaching entities, parties seeking to overlash cable must calculate the effect of their attachment on the pole integrity and must comply with all applicable safety, reliability and engineering standards and specifications (*i.e.*, wind loading, ice loading, etc.).

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<sup>50/</sup> Interconnection Order at ¶ 1161.

- Parties seeking to overlash must separately identify their facilities, in accordance with identification procedures to be established by the Commission.

The Infrastructure Owners urge the adoption of the above (or similar rules) to protect the structural integrity of the pole and the infrastructure owner from additional liability exposure from an attacher without an agreement. These rules also will avoid adverse consequences to the public safety. The Commission also should set appropriate penalties, including monetary penalties, for failure to comply with its overlashing rules. Issues of the applicable rate for overlashing, and the development of fair rate standards, also should be addressed.

#### **IV. JUST, REASONABLE AND NONDISCRIMINATORY RATES FOR ACCESS TO DUCTS, CONDUITS, RIGHTS-OF-WAY AND TRANSMISSION FACILITIES**

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The Pole Attachments Act gives the Commission jurisdiction to regulate the rates, terms and conditions of access to poles, ducts, conduits and rights-of-way owned or controlled by utilities, except where States have certified that they regulate such matters.<sup>51/</sup> Historically, however, the statute has applied primarily to the rates, terms and conditions for pole attachments to utilities' distribution poles. The statutory rate scheme established in the 1978 Pole Attachments Act did not lend itself to adaptation to the conduit, duct, right-of-way or even transmission facility context; nor does the amended rate scheme enacted as part of the 1996 Act.

Over the years since the enactment of the 1978 statute, utilities have received few demands for access to their ducts, conduits, rights-of-way or transmission facilities (other than rights-of-way over which pole distribution lines pass). Moreover, as a general matter, many have denied access to those facilities when access has been sought. The justification for the denial of access has been grounded in serious safety concerns. Utilities have long maintained -- and the Commission recently recognized -- that access to ducts, conduits and transmission facilities presents heightened safety concerns, far beyond the safety concerns raised by access to distribution poles.<sup>52/</sup>

Because the demand for access to ducts, conduits and transmission facilities has been very limited, the Commission has not yet undertaken the task of establishing a rate scheme for ducts, conduits, rights-of-way, or transmission facilities. The Infrastructure Owners urge the Commission to carefully study the issues involved in these contexts before embarking down that road.

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<sup>51/</sup> 47 U.S.C. § 224(b).

<sup>52/</sup> See, e.g., Interconnection Order at ¶¶ 1163, 1184.

Ducts, conduits, rights-of-way and transmission facilities are unique and pose uniquely different concerns. The concepts of usable and nonusable space, the number of parties present, or the space occupied by each have no meaning in the conduit or duct environment. For example, although a duct may have a certain amount of space, when multiple parties seek access to the duct, it may only be possible to accommodate access if inner duct is installed. Duct may only be divided a finite number of times. Conduit access poses the same issues. Further, duct and conduit issues vary greatly among various geographical regions and between urban and rural areas. Like the rights-of-way issues that the Commission recently recognized are a matter of state law<sup>53/</sup>, duct and conduit matters also are largely governed by state and local laws and ordinances.

Given the complexity of the issues, the Infrastructure Owners suggest that the Commission address the duct, conduit, rights-of-way and transmission issues much like it addressed the access and denial of access matters raised in the Interconnection Order. There, the Commission concluded that:

The reasonableness of particular conditions of access imposed by a utility should be resolved on a case-specific basis. . . . The record makes clear that there are simply too many variables to permit any other approach with respect to access to the millions of utility poles and untold miles of conduit in the nation.<sup>54/</sup>

Thus, the Commission adopted only five general rules of applicability and several guidelines to assist the parties in reaching mutually agreeable access agreements. The Commission declined to set a comprehensive regime of specific rules.<sup>55/</sup>

The Infrastructure Owners urge the Commission to follow this approach with respect to ducts, conduits, rights-of-way and transmission facilities. As a starting point, the Commission should allow parties to negotiate access to ducts, conduits, rights-of-way and transmission facilities where appropriate. The heightened concerns surrounding these types of facilities must continue to be recognized and access should be afforded only on terms and conditions that are consistent with capacity, safety, reliability and generally applicable engineering purposes.

In short, an overall deregulatory approach should be applied to the issue of ducts, conduits, rights-of-way and transmission facilities. The Infrastructure Owners

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<sup>53/</sup> Interconnection Order at ¶ 1179.

<sup>54/</sup> *Id.* at 1143.

<sup>55/</sup> Interconnection Order at ¶ 1143.

submit that such an approach comports with what Congress envisioned in the 1996 Act, including its amendments to the Pole Attachments Act. Moreover, it comports with the unique, inherent nature of ducts, conduits, rights-of-way and transmission facilities.

## **V. CONCLUSION**

The 1996 Act effected the most sweeping change in this Nation's telecommunications laws in 60 years. The change is premised on the notion that a deregulated, competitive market results in efficiency and innovation and produces the greatest benefits for the American public. The Infrastructure Owners urge the Commission to adopt such a deregulated, competitive approach with respect to pole attachment rates and related issues. Where regulation is needed, that regulation should be minimal and designed to achieve a specific goal.

The Infrastructure Owners suggest that the recommendations presented in this position statement are consistent with the overall deregulation and pro-competition themes. They urge the Commission to adopt a regulatory scheme, and specific regulations where necessary, consistent with their proposals.

## APPENDIX I

### **INFRASTRUCTURE OWNER COMPANY DESCRIPTIONS**

**American Electric Power Service Corporation**, a wholly-owned subsidiary of American Electric Power Co., Inc., is an organization which provides administrative, engineering, financial, legal and other services to the operating companies of American Electric Power Co., Inc. American Electric Power Co., Inc. is a public utility holding company registered under the Public Utility Holding Company Act of 1935, and holds all of the issued and outstanding common stock of the following companies: Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Ohio Power Company, Columbus Southern Power Company, Kingsport Power Company, and Wheeling Power Company.

**Commonwealth Edison Company ("ComEd")** is an investor-owned public utility that supplies electricity to approximately 3.3 million retail customers in a service territory that includes roughly the northern one-third of Illinois and includes the city of Chicago and its suburbs. ComEd and its parent holding company, Unicom Corporation, are corporations organized and existing under the laws of the State of Illinois. ComEd is subject to the jurisdiction of the Illinois Commerce Commission as a public utility. ComEd also provides wholesale requirements service to several municipalities located in its service area. With respect to that service, as well as to coordination agreements ComEd has with numerous other electric suppliers for the interstate transmission of energy, ComEd is subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC").

**Duke Power Company ("DPC")** supplies electricity to more than 1.7 million residential, commercial, and industrial customers in a 20,000 square-mile service area in North Carolina and South Carolina. DPC owns 1,772,732 electric distribution poles.

**Entergy Services, Inc.** is a subsidiary of Entergy Corporation, a public utility holding company organized pursuant to the provisions of the Public Utility Holding Company Act of 1935. Entergy Corporation owns all of the outstanding shares of common stock of the following five operating company subsidiaries: Entergy Arkansas, Inc. (formerly Arkansas Power & Light Company), Entergy Gulf States, Inc. (formerly Gulf States Utilities Company), Entergy Louisiana, Inc. (formerly Louisiana Power & Light Company), Entergy Mississippi, Inc. (formerly Mississippi

Power & Light Company), and Entergy New Orleans, Inc. (formerly New Orleans Public Service, Inc.) (collectively, the "Entergy Operating Companies"). The Entergy Operating Companies engage in the manufacture, generation, transmission, distribution, and sale of electricity to more than 2.3 million retail customers throughout 112,000 square miles of Arkansas, Louisiana, Texas, and Mississippi. Entergy Services, Inc. provides engineering, transmission, distribution planning, financial, human resource, tax, accounting, legal, and other services to the Entergy Operating Companies.

**Florida Power & Light Company ("FPL")** is the fourth largest investor-owned electric utility in the United States serving 3.5 million customers. FPL is a corporation organized and existing under the laws of the State of Florida and is a principle subsidiary of FPL Group, Inc. FPL is regulated by the Florida Public Service Commission. FPL's service territory covers 27,650 square miles in all or part of 35 Florida counties, most of the east coast of Florida, and the west coast of Florida south of the Tampa Bay area, including the municipalities of Miami, Ft. Lauderdale, West Palm Beach, Daytona Beach, and Sarasota.

**Northern States Power Company ("NSP")**, headquartered in Minneapolis, Minnesota, is a major utility company with growing domestic and overseas non-regulated energy ventures. NSP and its wholly-owned subsidiary, Northern States Power Company-Wisconsin, operate generation, transmission, and distribution facilities providing electricity to about 1.4 million customers in Minnesota, Wisconsin, North Dakota, South Dakota, and Michigan. The two companies also distribute natural gas to more than 400,000 customers in Minnesota, North Dakota, and Michigan, and provide a variety of energy-related services throughout their service areas.

**The Southern Company** is the parent firm of five electric utilities: Alabama Power, Georgia Power, Gulf Power, Mississippi Power, and Savannah Electric. Other subsidiaries include Southern Electric International, Southern Nuclear, Southern Development and Investment Group, Southern Communications Services, Inc., and Southern Company Services. The Southern Company supplies energy to a 120,000-square mile U.S. service territory spanning most of Georgia and Alabama, southeastern Mississippi, and the panhandle region of Florida --an area with a population of about 11 million. Through its Southern Electric International unit, The Southern Company also supplies electricity to customers in a number of other states and in Argentina, England, Chile, the Bahamas, Trinidad, and Tobago.

**Washington Water Power Company** is an energy services company with operations in five western states. The company provides electric service to 291,000

customers in eastern Washington and northern Idaho, and provides natural gas service to 227,000 customers in parts of four states: Washington, Idaho, Oregon, and California.

**APPENDIX II****UPDATE TO FERC ACCOUNT NO. REFERENCES  
IN APPENDIX B OF  
FCC RATE FORMULA**

<u>Account No.</u>	<u>Title</u>	<u>Location Reference</u>
364	Poles, Towers, and Fixtures	p.207, line 59, col g
365	Overhead Conductors, & Devices	p.207, line 60, col g
368	Line Transformers	p.207, line 63, col g
369	Services	p.207, line 64, col g
580	Operation Supervision & Engineering	p.321, line 103, col b
583	Overhead Line Expenses	p.322, line 107, col b
588	Miscellaneous Expenses	p.322, line 112, col b
590	Maintenance Supervision & Engineering	p.322, line 116, col b
593	Maintenance of Overhead Lines	p.322, line 119, col b
408.1	Taxes Other Than Income Taxes	p.114, line 13, col c
	Depreciation	p.200, line 18, col b
	Total Administration and General Expenses	p.323, line 168, col b
	Gross Plant Investment	p.200, line 8, col b
	Depreciation Accrual Rates for Accounts 364, 365, 368, and 369	p.337, col e